



DEPARTMENT OF AGRICULTURE

Farm Service Agency

[Docket ID FSA–2023–0020]

Notice of Funds Availability; Emergency Relief Program 2022 (ERP 2022)

AGENCY: Farm Service Agency, USDA.

ACTION: Notice of funds availability.

SUMMARY: The Farm Service Agency (FSA) is issuing this notice announcing ERP 2022, which will provide payments to eligible crop producers for losses due to qualifying disaster events including wildfires, hurricanes, floods, derechos, excessive heat, tornadoes, winter storms, freeze (including a polar vortex), smoke exposure, excessive moisture, qualifying drought, and related conditions that occurred in calendar year 2022. ERP 2022 will be administered through 2 tracks (referred to as Track 1 and Track 2). Track 1 will assist eligible crop producers who received indemnities for eligible crop or tree losses through certain Federal crop insurance policies or payments for crop losses through the Noninsured Crop Disaster Assistance Program (NAP). Track 2 will assist eligible crop producers for other eligible crop and tree losses through a revenue-based approach.

DATES: *Funding availability:* Application period for Track 1 will begin [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Application period for Track 2 will begin [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

Comments: We will consider comments we receive by [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: You may submit comments by the following method: Federal eRulemaking Portal: Go to <https://www.regulations.gov> and search for Docket ID FSA–

2023–0020. You may also send comments to the Desk Officer for Agriculture, Office of the Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Comments will be available for public inspection online at <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Kathy Sayers; telephone: (202) 720-6825; email: kathy.sayers@usda.gov. Individuals who require alternative means for communication should contact the USDA Target Center at (202) 720-2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay service (both voice and text telephone users can initiate this call from any telephone).

SUPPLEMENTARY INFORMATION:

Background

Title I of the Disaster Relief Supplemental Appropriations Act, 2023 (Division N of the Consolidated Appropriations Act, 2023; Pub. L. 117-328) provides approximately \$3.74 billion, to remain available until expended, for necessary expenses related to losses of revenue, quality, or production losses of crops (including milk, on-farm stored commodities, crops prevented from planting in 2022, and harvested adulterated wine grapes), trees, bushes, and vines, as a consequence of droughts, wildfires, hurricanes, floods, derechos, excessive heat, tornadoes, winter storms, freeze, including a polar vortex, smoke exposure, and excessive moisture occurring in calendar year 2022. Losses due to drought are only eligible for assistance if any area within the county in which the loss occurred was rated by the U.S. Drought Monitor as having a D2 (severe drought) for 8 consecutive weeks or a D3 (extreme drought) or higher level of drought intensity.

FSA is using the funding to assist eligible producers who suffered eligible losses through several programs.¹ In this document, FSA is announcing ERP 2022, which will assist eligible crop producers who suffered eligible losses due to qualifying disaster events as defined in this document. These producers have been significantly impacted by qualifying disaster events occurring in 2022, which have resulted in significant losses. FSA has designed ERP 2022 consistent with the public interest in streamlining and expediting disaster assistance payments to agricultural producers to the greatest extent possible. ERP 2022 will be administered through 2 tracks:

- Track 1 will use a streamlined process with pre-filled application forms, as discussed in this document. It will provide payments for eligible crop losses and tree losses, described below, where data are already on file with FSA or the Risk Management Agency (RMA), as a result of the producer previously receiving a NAP payment or an indemnity under certain Federal crop insurance policies for a loss in the same year that could have been affected by a qualifying disaster event; and
- Track 2 will provide payments for eligible crop and tree losses through a revenue-based approach using data provided by eligible producers on application forms.

Producers with losses that are eligible for Track 1 may apply for Track 1, Track 2, or both tracks; however, the Track 2 payment calculation will take into account any payments the producer receives under Track 1 to ensure a producer is not receiving duplicate benefits under both tracks.

¹ FSA previously announced Emergency Livestock Relief Program 2022 (ELRP 2022) on September 27, 2023 (88 FR 66361-66366) and the Milk Loss Program on September 11, 2023 (88 FR 62285-62292). ELRP 2022 and Milk Loss Program payments for 2022 losses have the same funding source as ERP 2022.

Both tracks cover the same eligible crops, as defined below. For payment limitation purposes, ERP 2022 classifies eligible crops into the following categories:

- specialty crops;
- non-specialty crops;
- high value crops; and
- other crops.

The term “non-specialty crop” only applies to Track 1, the terms “high value crop” and “other crop” only apply to Track 2, and the term “specialty crop” applies to both tracks; those terms are defined in this document and discussed below in the payment limitation section.

Definitions

The definitions in 7 CFR parts 718 and 1400 apply to ERP 2022, except as otherwise provided in this document. The following definitions also apply.

2017 WHIP means the 2017 Wildfires and Hurricanes Indemnity Program (7 CFR part 760, subpart O).

Administrative fee means the amount an insured producer paid for catastrophic risk protection and any additional coverage for each crop year as specified in the applicable Federal crop insurance policy.

Aquaculture means any species of aquatic organisms grown as food for human or livestock consumption or for industrial or biomass uses, fish raised as feed for fish that are consumed by humans, and ornamental fish propagated and reared in an aquatic medium. Eligible aquacultural species must be raised by a commercial operator and in water in a controlled environment.

ARC means the Agriculture Risk Coverage program (7 CFR part 1412).

Average adjusted gross farm income means the average of the person or legal entity's adjusted gross income (AGI) derived from farming, ranching, and forestry

operations, including losses, for the base period consisting of the 2018, 2019, and 2020 tax years.

If the resulting average adjusted gross farm income derived from items 1 through 12 of the definition of income derived from farming, ranching, and forestry operations is at least 66.66 percent of the average AGI of the person or legal entity, then the average adjusted gross farm income may also take into consideration income or benefits derived from the following:

- (1) The sale of equipment to conduct farm, ranch, or forestry operations; and
- (2) The provision of production inputs and production services to farmers, ranchers, foresters, and farm operations.

For legal entities not required to file a Federal income tax return, or a person or legal entity that did not have taxable income in one or more tax years during the base period, the average will be the adjusted gross farm income, including losses, averaged for the 2018, 2019, and 2020 tax years, as determined by FSA. A new legal entity will have its adjusted gross farm income averaged only for those years of the base period for which it was in business; however, a new legal entity will not be considered “new” to the extent it takes over an existing operation and has any elements of common ownership interest and land with the preceding person or legal entity from which it took over. When there is such commonality, income of the previous person or legal entity will be averaged with that of the new legal entity for the base period. For a person filing a joint tax return, the certification of average adjusted farm income may be reported as if the person had filed a separate Federal tax return and the calculation is consistent with the information supporting the filed joint return.

Average AGI means the average of the AGI as defined under 26 U.S.C. 62 or comparable measure of the person or legal entity. The relevant tax years for the 2022 program year are 2018, 2019, and 2020.

BCAP means the Biomass Crop Assistance Program (7 CFR part 1450).

Beginning farmer or rancher means a farmer or rancher who has not operated a farm or ranch for more than 10 years and who materially and substantially participates in the operation. For a legal entity to be considered a beginning farmer or rancher, at least 50 percent of the interest must be beginning farmers or ranchers.

Buy-up NAP coverage means NAP coverage at a payment amount that is equal to an indemnity amount calculated for buy-up coverage computed under section 508(c) or (h) of the Federal Crop Insurance Act and equal to the amount that the buy-up coverage yield for the crop exceeds the actual yield for the crop.

Catastrophic coverage has the same meaning as for NAP (in 7 CFR 1437.3), which is:

(1) For insured crops, the coverage offered by the Federal Crop Insurance Corporation (FCIC) under section 508(b) of the Federal Crop Insurance Act.

(2) For eligible NAP crops, coverage at the following levels due to an eligible cause of loss impacting the NAP covered crop during the coverage period:

- (i) Prevented planting in excess of 35 percent of the intended acres;
- (ii) A yield loss in excess of 50 percent of the approved yield;
- (iii) A value loss in excess of 50 percent; or
- (iv) An animal-unit-days (AUD) loss greater than 50 percent of expected AUD.

CFAP means the Coronavirus Food Assistance Program 1 and 2 under 7 CFR part 9, subparts A through C, excluding assistance for contract producers specified in § 9.203(l) through (o).

Certifying agent means a private or governmental entity accredited by the USDA Secretary for the purpose of certifying a production, processing, or handling operation as organic.

Controlled environment means an environment in which everything that can practicably be controlled by the producer with structures, facilities, and growing media (including but not limited to water, soil, or nutrients), is in fact controlled by the producer, as determined by industry standards.

Coverage level means the percentage determined by multiplying the elected yield percentage under a Federal crop insurance policy or NAP coverage by the elected price percentage.

Crop year means:

(1) For insured crops and trees, the crop year as defined according to the applicable Federal crop insurance policy; and

(2) For NAP-covered crops, the crop year as defined in 7 CFR 1437.3.

Deputy Administrator means the FSA Deputy Administrator for Farm Programs.

Direct market crop means a crop sold directly to consumers without the intervention of an intermediary such as a registered handler, wholesaler, retailer, packer, processor, shipper, or buyer (for example, a crop sold at a farmer's market or roadside stand), excluding crops sold for livestock consumption.

Disaster year means the calendar year in which the qualifying disaster event occurred (that is, 2022).

ELAP means the Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program (7 CFR part 1416, subpart B).

Eligible crop means a crop, including eligible aquaculture, that is produced, or would have been produced if the qualifying disaster event had not occurred (for example, crops prevented from planting), in the United States as part of a farming operation. It excludes:

(1) Crops for grazing;

(2) Aquatic species that do not meet the definition of aquaculture;

(3) *Cannabis sativa L.* and any part of that plant that does not meet the definition of hemp; and

(4) Timber.

Farming operation means a business enterprise engaged in the production of agricultural products, commodities, or livestock, operated by a person, legal entity, or joint operation. A person or legal entity may have more than one farming operation if the person or legal entity is a member of one or more legal entity or joint operation.

FCIC means the Federal Crop Insurance Corporation, a wholly owned Government Corporation of USDA, administered by RMA.

Federal crop insurance means an insurance policy reinsured by FCIC administered by RMA under the provisions of the Federal Crop Insurance Act (7 U.S.C. 1501-1524), as amended. It does not include private plans of insurance.

Federal crop insurance indemnity means the payment to a participant for crop losses covered under Federal crop insurance administered by RMA in accordance with the Federal Crop Insurance Act.

Feedstock means a crop including, but not limited to, grasses or legumes, algae, cotton, peanuts, coarse grains, small grains, oilseeds, or short rotation woody crops grown expressly for the purpose of producing a biobased material or product, and does not include residues and by-products of crops grown for any other purpose.

Hemp means the plant species *Cannabis sativa L.* and any part of that plant, including the seeds and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis, that is grown under a license or other required authorization issued by the applicable governing authority that permits the production of the hemp.

High value crop means, for Track 2:

(1) Any eligible crop that is not specifically identified as a specialty crop or listed in the definition of “other crop”; and

(2) Any eligible crop, regardless of whether it is identified as a specialty crop or listed in the definition of “other crop,” if the crop is a direct market crop, organic crop, or a crop grown for a specific market in which specialized products can be sold resulting in an increased value compared to the typical market for the crops (for example, soybeans intended for tofu production), as determined by the Deputy Administrator.

Note: The term “high value crop” does not apply to Track 1.

Income derived from farming, ranching, and forestry operations means income of a person or legal entity derived from:

- (1) Production of crops and unfinished raw forestry products;
- (2) Production of livestock, aquaculture products used for food, honeybees, and products derived from livestock;
- (3) Production of farm-based renewable energy;
- (4) Selling (including the sale of easements and development rights) of farm, ranch, and forestry land, water or hunting rights, or environmental benefits;
- (5) Rental or lease of land or equipment used for farming, ranching, or forestry operations, including water or hunting rights;
- (6) Processing, packing, storing, and transportation of farm, ranch, or forestry commodities including for renewable energy;
- (7) Feeding, rearing, or finishing of livestock;
- (8) Payments of benefits, including benefits from risk management practices, Federal crop insurance indemnities, and catastrophic risk protection plans;
- (9) Sale of land that has been used for agricultural purposes;

(10) Benefits (including, but not limited to, cost-share assistance and other payments) from any Federal program made available and applicable to payment eligibility and payment limitation rules, as provided in 7 CFR part 1400;

(11) Income reported on IRS Schedule F or other schedule used by the person or legal entity to report income from such operations to the IRS;

(12) Wages or dividends received from a closely held corporation, an Interest Charge Domestic International Sales Corporation (IC-DISC), or legal entity comprised entirely of family members when more than 50 percent of the legal entity's gross receipts for each tax year are derived from farming, ranching, and forestry activities as defined in this document; and

(13) Any other activity related to farming, ranching, or forestry, as determined by the Deputy Administrator.

IRS means the Department of the Treasury, Internal Revenue Service.

LDP means the Loan Deficiency Payment programs (7 CFR parts 1421, 1425, 1427, 1434, and 1435).

Legal entity means a corporation, joint stock company, association, limited partnership, limited liability company, irrevocable trust, estate, charitable organization, general partnership, joint venture, or other similar organization created under Federal or State law including any such organization participating in a business structure as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or as a participant in a similar organization. A business operating as a sole proprietorship is considered a legal entity.

Limited resource farmer or rancher means a farmer or rancher who is both of the following:

(1) A person whose direct or indirect gross farm sales did not exceed \$189,200 in each of the 2019 and 2020 calendar years (the relevant years for the 2022 program year); and

(2) A person whose total household income was at or below the national poverty level for a family of four in each of the 2019 and 2020 calendar years. Limited resource farmer or rancher status can be determined using a website available through the Limited Resource Farmer and Rancher Online Self Determination Tool through the Natural Resources Conservation Service at <https://lrftool.sc.egov.usda.gov>.

For an entity to be considered a limited resource farmer or rancher, all members who hold an ownership interest in the entity must meet the criteria in paragraphs (1) and (2) of this definition.

LFP means the Livestock Forage Disaster Program (7 CFR part 1416, subpart C).

MLG means marketing loan gains from the Marketing Assistance Loan program (7 CFR parts 1421, 1425, 1427, 1434, and 1435).

Minor child means a person who is under 18 years of age as of June 1, 2022.

MFP means the 2018 Market Facilitation Program (7 CFR part 1409, subpart A) and the 2019 Market Facilitation Program (7 CFR part 1409, subpart B).

NAP means the Noninsured Crop Disaster Assistance Program (7 CFR part 1437).

NAP service fee means the fee the producer paid to obtain NAP coverage specified in 7 CFR 1437.7.

Non-specialty crop means a crop, under Track 1, that does not meet the definition of specialty crop. Note: The term “non-specialty crop” does not apply to Track 2.

On-Farm Storage Loss Program means the On-Farm Storage Loss Program (7 CFR part 760, subpart P).

Organic crop means a crop that is grown on acreage certified by a certifying agent as conforming to organic standards (7 CFR part 205) and organically produced

consistent with section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502).

Other crop means, for Track 2, cotton, peanuts, rice, feedstock, and any crop grown with an intended use of grain, silage, or forage, unless the crop meets the requirements in paragraph (2) of the definition of “high value crop.” Note: The term “other crop” does not apply to Track 1.

Ownership interest means to have either a legal ownership interest or a beneficial ownership interest in a legal entity. For the purposes of administering ERP 2022, a person or legal entity that owns a share or stock in a legal entity that is a corporation, limited liability company, limited partnership, or similar type entity where members hold a legal ownership interest and shares in the profits or losses of such entity is considered to have an ownership interest in such legal entity. A person or legal entity that is a beneficiary of a trust or heir of an estate who benefits from the profits or losses of such entity is also considered to have a beneficial ownership interest in such legal entity.

Person means an individual who is a natural person and does not include a legal entity.

PLC means the Price Loss Coverage program (7 CFR part 1412).

Premium means the premium paid by the producer for Federal crop insurance coverage or NAP buy-up coverage levels.

Producer means a person or legal entity who was entitled to a share in the eligible crop or would have shared had the eligible crop been produced.

Production inputs mean material to conduct farming operations, such as seeds, chemicals, and fencing supplies.

Production services mean services provided to support a farming operation, such as custom farming, custom feeding, and custom fencing.

Qualifying disaster event means wildfires, hurricanes, floods, derechos, excessive heat, tornadoes, winter storms, freeze (including a polar vortex), smoke exposure, excessive moisture, qualifying drought, and related conditions occurring in 2022.

Qualifying drought means an area within the county was rated by the U.S. Drought Monitor as having a drought intensity of D2 (severe drought) for 8 consecutive weeks or D3 (extreme drought) or higher level for any period of time during the applicable calendar year.

QLA Program means the Quality Loss Adjustment Program (7 CFR part 760, subpart R).

Related condition means damaging weather and adverse natural occurrences that occurred concurrently with and as a direct result of a specified qualifying disaster event. Related conditions include, but are not limited to:

- (1) Excessive wind that occurred as a direct result of a derecho;
- (2) Silt and debris that occurred as a direct and proximate result of flooding;
- (3) Excessive wind, storm surges, tropical storms, and tropical depressions that occurred as a direct result of a hurricane; and
- (4) Excessive wind and blizzards that occurred as a direct result of a winter storm.

Socially disadvantaged farmer or rancher means a farmer or rancher who is a member of a group whose members have been subjected to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities. For entities, at least 50 percent of the ownership interest must be held by individuals who are members of such a group. Socially disadvantaged groups include the following and no others unless approved in writing by the Deputy Administrator:

- (1) American Indians or Alaskan Natives;

- (2) Asians or Asian-Americans;
- (3) Blacks or African Americans;
- (4) Hispanics or Hispanic Americans;
- (5) Native Hawaiians or other Pacific Islanders; and
- (6) Women.

Specialty crops means fruits, tree nuts, vegetables, culinary herbs and spices, medicinal plants, and nursery, floriculture, and horticulture crops. This includes common specialty crops identified by USDA's Agricultural Marketing Service at <https://www.ams.usda.gov/services/grants/scbgp/specialty-crop> and other crops as designated by the Deputy Administrator. This term also includes trees covered by Federal crop insurance policies included in Track 1.

STRP means the Seafood Trade Relief Program (announced in the notice of funds availability published on September 14, 2020 (85 FR 56572)).

Substantial beneficial interest (SBI) has the same meaning as specified in 7 CFR 457.8. For the purposes of ERP 2022 Track 1, Federal crop insurance records for "transfer of coverage, right to indemnity" are considered the same as SBIs.

Tree means a tall, woody plant having comparatively great height, and a single trunk from which an annual crop is produced for commercial market for human consumption, such as a maple tree for syrup, or papaya or orchard tree for fruit. It includes immature trees that are intended for commercial purposes. Nursery stock, banana and plantain plants, and trees used for pulp or timber are not considered eligible trees.

Underserved farmer or rancher means a beginning farmer or rancher, limited resource farmer or rancher, socially disadvantaged farmer or rancher, or veteran farmer or rancher.

Unit means the unit structure as defined under the applicable Federal crop insurance policy for insured crops or in 7 CFR 1437.9 for NAP-covered crops.

United States means all 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

USDA means the U.S. Department of Agriculture.

U.S. Drought Monitor means the system for classifying drought severity according to a range of abnormally dry to exceptional drought. It is a collaborative effort between Federal and academic partners, produced on a weekly basis, to synthesize multiple indices, outlooks, and drought impacts on a map and in narrative form. This synthesis of indices is reported by the National Drought Mitigation Center at <http://droughtmonitor.unl.edu>.

Veteran farmer or rancher means a farmer or rancher who has served in the Armed Forces (as defined in 38 U.S.C. 101(10)²) and:

- (1) Has not operated a farm or ranch for more than 10 years; or
- (2) Has obtained status as a veteran (as defined in 38 U.S.C. 101(2)³) during the most recent 10-year period.

For an entity to be considered a veteran farmer or rancher, at least 50 percent of the ownership interest must be held by members who have served in the Armed Forces and meet the criteria in paragraph (1) or (2) of this definition.

WFRP means Whole-Farm Revenue Protection available through the FCIC, including coverage under the Micro Farm Program.

² The term “Armed Forces” means the United States Army, Navy, Marine Corps, Air Force, Space Force, and Coast Guard, including the reserve components.

³ The term “veteran” means a person who served in the active military, naval, air, or space service, and who was discharged or released under conditions other than dishonorable.

WHIP+ means the Wildfires and Hurricanes Indemnity Program Plus (7 CFR part 760, subpart O).

Producer Eligibility

To be eligible for ERP 2022, a producer must meet all requirements described below for Track 1 or Track 2, as applicable, and be a:

- (1) Citizen of the United States;
- (2) Resident alien, which for purposes of ERP 2022 means “lawful alien” as defined in 7 CFR part 1400;
- (3) Partnership organized under State law;
- (4) Corporation, limited liability company, or other organizational structure organized under State law;
- (5) Indian Tribe or Tribal organization, as defined in section 4(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304); or
- (6) Foreign person or foreign entity who meets all requirements as described in 7 CFR part 1400.

Track 1 Overview

Track 1 will provide a streamlined application process for eligible crop and tree losses during the 2022 or 2023 crop years⁴ for which a producer had:

- A Federal crop insurance policy that provided coverage for crop production losses or tree losses related to the qualifying disaster events and received an indemnity⁵ for a crop and unit, excluding:

⁴The 2023 crop year is included because a qualifying disaster event occurring in the 2022 calendar year may have caused a loss of a crop during the 2023 crop year, based on how “crop year” is defined in the applicable Federal crop insurance policy or NAP provisions.

⁵For purposes of Track 1, “indemnity” does not include cottonseed endorsement payments, downed rice endorsement payments, sugarcane crop replacement endorsement payments, replant payments, or raisin reconditioning payments.

- “ crops with an intended use of grazing,⁶
- “ livestock policies,
- “ forage seeding,
- “ Margin Protection Plan policies purchased without a base policy,⁷
- “ banana plants insured under the Hawaii Tropical Trees provisions,⁸ and
- “ policies issued in Puerto Rico;⁹ or
- NAP coverage and received a NAP payment for a crop and unit, excluding crops with an intended use of grazing.

The applicable Federal crop insurance policies and NAP provide payments to producers for crop and tree losses due to eligible causes of loss, as defined in the producer’s Federal crop insurance policy or NAP regulations and basic provisions. RMA and FSA are using data submitted by producers for Federal crop insurance or NAP purposes to calculate a producer’s eligible loss under Track 1. The Track 1 payment calculation is intended to compensate eligible crop and tree producers for a percentage of that loss determined by the applicable ERP factor, which varies based on the producer’s level of Federal crop insurance or NAP coverage, as described later in this document. To be eligible for payment under Track 1, a producer must have suffered a crop or tree loss that was caused, in whole or in part, by a qualifying disaster event. Because the amount of loss due to a qualifying disaster event cannot be separated from the amount of loss caused by other causes of loss covered by some Federal crop insurance policies or NAP,

⁶ Crops with an intended use of grazing are covered under ELRP 2022.

⁷ While the majority of crop insurance policies cover an eligible crop loss, a small number do not and are not eligible for ERP, including livestock policies, forage seeding, and margin policies.

⁸ While bananas are covered under crops, the banana plants are not a tree, bush or a vine.

⁹ Federal crop insurance policies issued in Puerto Rico are not transmitted through the standardized Policy Acceptance and Storage System. Therefore, pre-filled applications cannot be automatically generated under Track 1.

the Track 1 payment will be based on the producer's loss as long as those losses were caused, in whole or in part, by a qualifying disaster event.

Track 1 excludes losses to aquacultural species for which the producer received a payment under ELAP to avoid providing duplicate benefits for losses already at least partially compensated for by ELAP. It also excludes losses for which the producer received a Phase 1 payment under the previous ERP.¹⁰

In some situations, a producer may have received both a NAP payment for a crop loss and an indemnity under a Federal crop insurance policy that is included in Track 1 to address the same loss. Examples of these policies include Rainfall Index plans for Annual Forage; Pasture, Rangeland, and Forage; and Apiculture. In those situations, the producer must elect whether to receive the Track 1 payment based only on the data associated with their Federal crop insurance indemnity or their NAP payment, but they cannot receive a Track 1 payment based on both the crop insurance indemnity and NAP payment. This policy is necessary to avoid compensating producers twice for the same loss under Track 1.

Track 1 Applications

FSA and RMA will identify the producers who meet the criteria described above to apply for Track 1. For each of those producers, FSA will generate an FSA-523, Emergency Relief Program (ERP) 2022 Track 1 Application, with certain items pre-filled with information already on file with USDA, as listed below. Producers cannot alter the data in these pre-filled items; any alterations in the pre-filled data on the application will result in the producer's Track 1 application being considered incomplete and the application will not be processed by FSA. FSA will not calculate Track 1 payments

¹⁰ The previous ERP provided assistance for eligible crop losses due to qualifying disaster events in calendar years 2020 and 2021. Phase 1 of that program included 2022 crop year losses if the loss was due, in whole or in part, to a qualifying disaster event that occurred in the 2021 calendar year.

using data manually submitted by producers. Track 1 payments will only be calculated using data already on file with RMA and FSA. If a producer believes that any information that has been pre-filled is incorrect, the producer should contact their Federal crop insurance agent for insured crops or their FSA county office for NAP-covered crops. Once the corrected data have been received and processed by RMA and FSA, an updated Track 1 application may be generated for the producer.

For producers who received a Federal crop insurance indemnity for eligible policies, the pre-filled application will include:

- the producer's physical State and county codes,
- unit numbers,
- crops, and
- crop years.

For producers who received a NAP payment, the pre-filled applications will include:

- the producer's administrative State and county codes,
- unit numbers,
- crop years,
- pay crops, and
- pay groups.

FSA will also pre-fill the calculated Track 1 payment amounts, prior to any payment reductions for reasons such as payment limitation and factoring of payments to stay within available funding.

Receipt of a pre-filled application form is not a confirmation that the producer is eligible to receive a Track 1 payment. In order to receive a payment, the producer must certify that their Federal crop insurance indemnity or NAP payment on which the Track 1 payment will be based was due, in whole or in part, to a crop production loss or a tree

loss caused by a qualifying disaster event. Producers are responsible for reviewing the list of qualifying disaster events, and if a loss was due to drought, producers must also ensure that the county where the crop and unit was located meets the definition of “qualifying drought.” FSA will provide a factsheet and other materials to provide examples and more details on the qualifying disaster events to assist producers (available through FSA county offices and at <https://www.fsa.usda.gov/programs-and-services/emergency-relief/index>). Producers who received a Federal crop insurance indemnity under a WFRP policy or for a whole-farm unit must also certify to the percentage of their expected revenue or total liability for the unit, respectively, from specialty crops for the purpose of administration of ERP 2022 payment limitations.¹¹

Producers must also certify on FSA-523 that they will meet the requirement to purchase Federal crop insurance or NAP coverage for the next 2 available crop years, as described later in this document. If multiple crops and units are listed on an application and the producer only agrees to purchase Federal crop insurance or NAP coverage for only some of the crops and units, a Track 1 payment will be issued only for those crops and units for which the producer agrees to purchase Federal crop insurance or NAP coverage for the next 2 available crop years.

The portion of the form for producers who had Federal crop insurance will list the primary policy holder and all producers with an SBI who have a record established with FSA. If one or more producers with an SBI had a share in a crop, the primary policy holder must update the application to show the share in the crop for each of those producers in addition to the primary policy holder. If the producer(s) are determined to

¹¹ WFRP provides risk management safety for specialty and non-specialty crops under one Federal crop insurance policy. The producer certifies to the percentage of expected revenue or total liability for the unit for specialty crops, which results in the attribution of the specialty and non-specialty crop portions of the ERP 2022 payment to the separate payment limitations.

be eligible, payments will be issued to the primary policy holder and to any eligible producers with an SBI based on their ownership share of the crop. To receive a payment, each person or entity that is listed as having a share of the Track 1 payment for a crop and unit must sign the application and agree to purchase Federal crop insurance or NAP coverage for that crop and unit.

Track 1 Payment Calculation

FSA and RMA will calculate Track 1 payments using the loss data on file with FSA or RMA at the time of payment calculation or as later updated by FSA or RMA upon identification of an error in the data on file at time of payment calculation.¹² The Track 1 payment calculation for a crop and unit will depend on the type and level of Federal crop insurance or NAP coverage obtained by the producer. Crops covered under a WFRP policy or included in a whole-farm unit will be treated as a single crop for payment calculation purposes. Separate payment limitations will apply to the portions of the payments that are attributed to specialty and to non-specialty crops, as described later in this document.

Each payment calculation will use an ERP factor based on the producer's level of Federal crop insurance or NAP coverage for that eligible crop or tree, as specified in the following tables.

Federal Crop Insurance Coverage Level	ERP Factor (%)
Catastrophic coverage	75.0
More than catastrophic coverage but less than 55 percent.....	80.0
At least 55 percent but less than 60 percent.....	82.5
At least 60 percent but less than 65 percent.....	85.0
At least 65 percent but less than 70 percent.....	87.5
At least 70 percent but less than 75 percent.....	90.0
At least 75 percent but less than 80 percent.....	92.5
At least 80 percent.....	95.0

¹² Track 1 payments will be calculated using only data on file with RMA and FSA. FSA will not calculate Track 1 payments using data manually submitted by producers.

NAP Coverage Level	ERP Factor (%)
Catastrophic coverage	75.0
50 percent	80.0
55 percent	85.0
60 percent	90.0
65 percent	95.0

When determining the ERP factors, analysis was conducted to ensure that payments do not exceed available funding and, in aggregate across all eligible crop and tree producers, do not exceed 90 percent of losses, as required by Title I of the Disaster Relief Supplemental Appropriations Act, 2023. The difference between the ERP factors for Federal crop insurance and NAP is due to differences in the available coverage levels under Federal crop insurance and NAP. Federal crop insurance is available at the catastrophic coverage level (50 percent production coverage of 55 percent of the price) and buy-up coverage levels (50 percent to 85 percent of the production for 100 percent of the price). The coverage level for NAP is limited by law to a maximum of 65 percent buy-up coverage. For both NAP and Federal crop insurance, the ERP payment factor for the catastrophic and maximum buy-up levels are 75 percent and 95 percent, respectively, with the ERP factors stair-stepping for the buy-up options in-between as shown in the tables above. Title I of the Disaster Relief Supplemental Appropriations Act, 2023, provides that payments to eligible crop and tree producers who did not have Federal crop insurance or NAP coverage cannot exceed 70 percent of their loss. The lowest ERP factor for eligible crop and tree producers who had Federal crop insurance or NAP is set at 75 percent. Payment limits and other reductions will result in reducing ERP 2022 payments, further lowering the percent of losses covered.

For eligible crop producers who received Federal crop insurance indemnities, RMA will use the producer's data that are already on file, which provide the necessary information to determine the producer's amount of loss. Federal crop insurance provides

financial assistance for crop losses due to specified natural disasters and uses a producer's data to calculate a payment based on the type of Federal crop insurance coverage elected by the producer. As previously discussed, Track 1 is intended to compensate eligible crop and tree producers for a percentage of their loss determined by the applicable ERP factor based on the level of Federal crop insurance coverage purchased; therefore, RMA will calculate each producer's loss consistent with the approved RMA loss procedures for the type of coverage purchased¹³ but using the ERP factor. This calculated amount will then be adjusted by subtracting the gross Federal crop insurance indemnity.

After calculating the producer's loss and subtracting the gross Federal crop insurance indemnity as described above for each crop and unit, progressive factoring¹⁴ will be applied. Progressive factoring will be applied by payment range, according to the table below, and FSA will calculate the sum of each of those calculations.

Payment Range	Progressive Factor (%)
Up to \$2,000.....	100
\$2,001 to \$4,000.....	80
\$4,001 to \$6,000.....	60
\$6,001 to \$8,000.....	40
\$8,001 to \$10,000.....	20
Over \$10,000.....	10

For example, to apply progressive factoring to a calculated loss (after subtraction of indemnities) of \$5,000, FSA would multiply:

- the first \$2,000 by a factor of 100 percent ($\$2,000 \times 100\% = \$2,000$),

¹³ For example, ERP 2022 for Area Risk Protection Insurance (ARPI) and Stacked Income Protection (STAX) is based on area-wide (for example, county) production losses.

¹⁴ Progressive factoring is a mechanism that ensures the limited available funding is distributed in a manner benefitting the majority of producers rather than a few. Additionally, progressive factoring increases emergency relief payments to most participants while reducing larger potential payments which increases the proportion of funding provided to smaller producers.

- the second \$2,000 by a factor of 80 percent ($\$2,000 \times 80\% = \$1,600$), and
- the remaining \$1,000 by a factor of 60 percent ($\$1,000 \times 60\% = \600).

The sum of those calculations is \$4,200, which is the calculated ERP 2022 payment after progressive factoring.

For another example, to apply progressive factoring to a calculated loss (after subtraction of indemnities) of \$430,000, FSA would multiply:

- the first \$2,000 by a factor of 100 percent ($\$2,000 \times 100\% = \$2,000$),
- the second \$2,000 by a factor of 80 percent ($\$2,000 \times 80\% = \$1,600$),
- the third \$2,000 by a factor of 60 percent ($\$2,000 \times 60\% = \$1,200$),
- the fourth \$2,000 by a factor of 40 percent ($\$2,000 \times 40\% = \800),
- the fifth \$2,000 by a factor of 20% ($\$2,000 \times 20\% = \400), and
- the remaining \$420,000 by a factor of 10 percent ($\$420,000 \times 10\% = \$42,000$).

The sum of those calculations is \$48,000, which is the calculated ERP 2022 payment after progressive factoring.

For underserved producers, the producer's share of the Federal crop insurance administrative fee and premium will be added to the resulting sum.¹⁵

¹⁵ Providing a refund of underserved producers' premiums and fees supports the equitable administration of FSA programs by targeting limited resources to support underserved farmers and ranchers, who are more likely to lack financial reserves and access to capital to invest in future risk protection while coping with losses due to unexpected events outside of their control. The refund of premiums and fees for these more-often vulnerable and smaller operations who often lack financial resources supports access to higher levels of coverage available through Federal crop insurance or NAP. This approach is consistent with the intent to provide reduced service fees and premium reductions to underserved farmers and ranchers for other FSA programs as authorized by law. NAP provides a reduced service fee and premium for underserved farmers and ranchers (7 U.S.C. 7333(k)(2) and 7 U.S.C. 7333(l)(3)). In addition, Federal crop insurance provides an administrative fee waiver for limited resource farmers, beginning farmers or ranchers, and veteran farmers or ranchers; and offers a premium reduction for beginning farmers or ranchers and veteran farmers or ranchers (7 U.S.C. 1508(b)(5)(E)(i) and 7 U.S.C. 1508(e)(8)).

For all eligible crop producers, FSA will then apply a final payment factor of 75 percent, resulting in the producer's calculated Track 1 payment.

For NAP-covered crops and trees, FSA will use the producer's crop production or inventory data that are already on file, which provides the necessary information to determine the producer's amount of loss. NAP provides financial assistance for crop losses due to specified natural disasters and uses a producer's crop production or inventory data to calculate a payment based on the level of NAP coverage elected by the producer. As previously discussed, ERP 2022 is intended to compensate eligible crop and tree producers for a percentage of loss determined by the applicable ERP factor based on their NAP coverage level; therefore, FSA will perform a calculation that is consistent with the NAP payment calculation for the pay crop and unit, as provided in 7 CFR part 1437, but using the ERP factor in the table above applicable to the producer's NAP coverage level as the applicable guarantee in those calculations. For example, the guarantee for a producer that had purchased 60 percent NAP coverage would be adjusted and recalculated based on a 90 percent ERP factor. The calculated amount using the ERP factor would then be adjusted by subtracting the producer's gross NAP payment.¹⁶ For underserved producers, the producer's share of the NAP service fees and premium will be added to the result of that calculation.¹⁷

The calculated amount for NAP-covered crops will not be subject to the progressive factoring¹⁸ that applies to ERP 2022 payments based on Federal crop

¹⁶ The gross NAP payment is the amount calculated according to 7 CFR part 1437, prior to any payment reductions for reasons including, but not limited to, sequestration, payment limitation, and average AGI limitations.

¹⁷ See footnote 15. NAP service fees are waived for producers with a CCC-860 certification of underserved status on file; however, if an underserved producer did not previously file CCC-860 to receive a service fee waiver, but files one now, their service fee will be added in the Track 1 payment calculation.

¹⁸ Progressive factoring will not apply to ERP Track 1 payments calculated based on NAP payments as they traditionally support smaller producers and non-traditional crops. Non-traditional crops are not typically covered by Federal crop insurance products

insurance indemnities; however, it will be multiplied by a final payment factor of 75 percent to ensure that total payments do not exceed the available funding.

FSA will issue Track 1 payments as applications are processed and approved. All ERP 2022 payments are subject to the availability of funding. If additional funding is available after all eligible ERP 2022 applications have been processed and payments have been issued, FSA may issue an additional payment, not to exceed the maximum amount allowed by law.

Track 2 Overview

Track 2 will provide assistance for eligible revenue, production, and quality losses of eligible crops not included in Track 1. FSA has determined that the best estimation of such losses is a producer's decrease in disaster year revenue compared to a benchmark year revenue, where benchmark year revenue represents a producer's revenue prior to the impact of the qualifying disaster event. This difference in revenue will reflect losses in both production and quality due in whole or in part to qualifying disaster events without requiring the more extensive calculations and documentation required under some previous FSA programs addressing crop losses due to disaster events. Decreases in disaster year revenue compared to benchmark revenue also reflect a producer's loss due to a qualifying disaster event regardless of whether the loss occurs before harvest or after harvest while the crop is in storage, further streamlining the delivery of assistance.

To be eligible for Track 2, a producer must certify that they suffered a loss in disaster year revenue, as compared to a benchmark year revenue, that was due to necessary expenses associated with losses of eligible crops due in whole or in part to a qualifying disaster event that occurred in the 2022 calendar year. Track 2 provides 2 options for determining the benchmark and disaster year revenues:

so the higher levels of coverage and risk protection under Federal crop insurance are not available to offset losses for producers of those crops in times of disaster.

- The tax year option, which allows producers to use certain information located in their tax records to apply for Track 2,¹⁹ or
- The expected revenue option, which is intended to better address situations such as a change in operation capacity²⁰ in the disaster year, as compared to the 2018 or 2019 benchmark year; the 2018 and 2019 tax years not reasonably reflecting a normal year's revenue for reasons including losses due to disaster events in 2018 and 2019 or changes in crop prices; or production of crops that do not generate revenue for the producer directly from the sale of the crop (for example, forage fed to livestock or grapes used by the producer to make wine).

The following table summarizes benchmark and disaster year revenue for the 2 options. Sources of revenue to be included in allowable gross revenue, expected revenue, and actual revenue are explained below in greater detail.

Option	Benchmark Year Revenue	Disaster Year Revenue
Tax Year	A producer's allowable gross revenue for the 2018 or 2019 tax year, as elected by the producer.	A producer's allowable gross revenue for the 2022 or 2023 tax year, as elected by the producer.
Expected Revenue	A producer's expected revenue from all eligible crops that could have been affected by a qualifying disaster event in calendar year 2022.	A producer's actual revenue from all eligible crops that were included in the producer's expected revenue.

Although most producers may choose between the 2 options when applying for Track 2, there are two situations that require a producer to use a specific option:

- Situation 1: Producers who received a payment under the previous ERP for the 2021 disaster year and elected the 2022 tax year for their

¹⁹ The tax year option is similar to the approach used in Phase 2 of the previous ERP, which provided assistance for crop losses due to disaster events in 2020 and 2021.

²⁰ Change in operation capacity does not include crop rotation from year to year, changes in farming practices such as converting from conventional tillage to no-till, or changing the amount of fertilizers or chemicals used.

representative disaster year for Phase 2 can only apply for Track 2 using the tax year option, and they must select 2023 as their representative disaster year to ensure that they are not paid for the same loss under both programs, as those producers had previously certified that 2022 losses were the result of 2021 disaster events.²¹

- Situation 2: Producers, except those described in Situation 1, must use the expected revenue option if they had a decrease in operating capacity during their disaster year, as compared to the 2018 or 2019 benchmark year, were a new producer with no benchmark year revenue in 2018 or 2019, or produced any crop or crops that did not generate revenue directly from the sale of the crop and that the producer uses within their ordinary operation.

Producers who had an increase in operation capacity may elect either the tax year option or the expected revenue option; however, they may not adjust benchmark year revenue under the tax year option to reflect the change, which is likely to result in a lower Track 2 payment because the 2018 or 2019 tax year would not accurately reflect their expected revenue at their 2022 operating capacity.

Producers must use the same option to calculate both the benchmark year revenue and disaster year revenue. For example, a producer who uses the expected revenue option for the benchmark year must also use the actual revenue option for the disaster year; they cannot use 2022 or 2023 tax year revenue for the disaster year.

²¹ Producers applying for Phase 2 of the previous ERP for losses due to qualifying disaster events in the 2021 calendar year selected either the 2021 or 2022 tax year as the applicable disaster year. Producers who selected the 2022 tax year have already been compensated for their 2022 tax year losses, but may select the 2023 tax year for the disaster year for Track 2.

Track 2 Tax Year Option

Producers who use the tax year option for Track 2 will select 2018 or 2019 for their benchmark year revenue and 2022 or 2023 as their representative year for the disaster year revenue and will certify to their allowable gross revenue for those years. Allowable gross revenue is based on the year for which the revenue would be reported for the purpose of filing a tax return, except for the ERP 2022 Track 1 payments specified below. Producers who file or would be eligible to file a joint tax return will certify their allowable gross revenue based on what it would have been had they filed taxes separately for the applicable year.

Allowable gross revenue includes revenue from:

- (1) Sales of eligible crops produced by the producer, which includes sales resulting from value added through post-production activities (for example, sales of jam from the processing of strawberries) that were reportable on IRS Schedule F;
- (2) Sales of eligible crops a producer purchased for resale that had a change in characteristic due to the time held (for example, a plant purchased at a size of 2 inches and sold as an 18-inch plant after 4 months), less the cost or other basis of such eligible crops;
- (3) Cooperative distributions directly related to the sale of the eligible crops produced by the producer, such as patronage paid to producers for gross grain sales;
- (4) Benefits for eligible crops under the following agricultural programs: 2017 WHIP, ARC and PLC, BCAP, CFAP, ELAP (for aquaculture crops), ERP Phases 1 and 2, LDP, MLG, MFP, the On-Farm Storage Loss Program, Pandemic Assistance Revenue Program, QLA Program, STRP, and WHIP+;

- (5) Commodity Credit Corporation loans for eligible crops, if treated as income and reported to the IRS;
- (6) Federal crop insurance proceeds for eligible crops, minus the amount of administrative fees and premiums;
- (7) NAP payments for eligible crops, minus the amount of service fees and premiums;
- (8) Proceeds for eligible crops under private insurance policies;
- (9) Payments issued through grant agreements with FSA for losses of eligible crops;
- (10) Grants from the Department of Commerce, National Oceanic and Atmospheric Administration (NOAA) and State program funds providing direct payments for the loss of eligible crops or the loss of revenue from eligible crops;
- (11) Other revenue directly related to the production of eligible crops that the IRS requires the producer to report as income, such as commodity-specific income received from State or local governments and net gain from hedging; and
- (12) For the disaster year only, ERP 2022 Track 1 payments issued to another person or entity for the producer's share of an eligible crop, regardless of the tax year in which the payment would be reported to the IRS.²²

Allowable gross revenue does not include revenue from sources other than those listed above, including but not limited to, revenue from:

- (1) Federal assistance programs not included above;

²² Track 1 allows producers who received pre-filled application forms to indicate shares in the crop. In some cases, payment for a producer's share of a crop may have been issued to a different person or entity than the producer applying for a related revenue loss under Track 2. Applications for Track 2 must include any Track 1 payments issued to another person or entity for the producer's share of an eligible crop in order to prevent duplicate benefits being issued for the same loss.

- (2) Sales of livestock, animal by-products, and any commodities that are excluded from “eligible crops;”
- (3) Resale items not held for characteristic change;
- (4) Income from a pass-through entity such as an S Corp or limited liability company;
- (5) Conservation program payments;
- (6) Any pandemic assistance payments that were not for the loss of eligible crops or the loss of revenue from eligible crops including, but not limited to, the Pandemic Livestock Indemnity Program, Pandemic Assistance for Timber Harvesters and Haulers, and Spot Market Hog Pandemic Program;
- (7) Custom hire income;
- (8) Net gain from speculation;
- (9) Wages, salaries, tips, and cash rent;
- (10) Rental of equipment or supplies; and
- (11) Acting as a contract producer of an agricultural commodity.

Form FSA-524-A, Emergency Relief Program (ERP) 2022 Track 2 Tax Year Revenue Worksheet, is an optional form that producers may use to assist in determining their allowable gross revenue. It is available at <https://www.fsa.usda.gov/programs-and-services/emergency-relief/index>.

Track 2 Tax Year Option Special Provisions for Certain Producers

As stated above, producers who received a payment under the previous ERP for the 2021 program year and elected the 2022 tax year for their representative disaster year revenue are required to use the tax year option for Track 2, and they must use the 2023 tax year for disaster year revenue.

Those producers must certify to an allowable gross revenue for the benchmark year that they adjusted if the producer had a decreased operation capacity in a disaster

year for which they are applying for ERP Track 2, compared to the benchmark year. Those producers may certify to an allowable gross revenue that they adjusted for the benchmark year on FSA–524 if either of the following apply:

- (1) The producer did not have a full year of revenue for 2018 or 2019; or
- (2) The producer had expanded their operation capacity in the disaster year compared to the benchmark year.

Change in operation capacity does not include crop rotation from year to year, changes in farming practices such as converting from conventional tillage to no-till, or increasing the rate of fertilizers or chemicals.

If requested by FSA, producers are required to submit documentation to FSA to support their adjustments within 30 calendar days of the request. The documentation to support an adjustment due to a change in operation capacity must show that the adjustment to the producer's benchmark year revenue is due to:

- (1) An addition or decrease in production capacity of the farming operation;
- (2) An increase or decrease in the use of existing production capacity; or
- (3) Physical alterations that were made to existing production capacity.

If a producer did not have allowable gross revenue in a benchmark year because they began farming in 2020 or later, the producer may adjust benchmark year revenue on FSA–524 that represents the producer's reasonably expected disaster year revenue prior to the impact of the qualifying disaster event.

If requested by FSA, documentation required to support a producer's certification must be provided within 30 calendar days of FSA's request, or the producer will be considered ineligible for ERP Track 2. Acceptable documentation must be generated in the ordinary course of business and dated prior to the impact of the qualifying disaster event and includes, but is not limited to:

- (1) Financial documents such as a business plan or cash flow statement that demonstrate an expected level of revenue;
- (2) Sales contracts or purchase agreements; and
- (3) Documentation supporting production capacity, use of existing production capacity, or physical alterations that demonstrate production capacity.

Producers who received a payment under the previous ERP for the 2021 program year and elected the 2022 tax year for their representative disaster year must also include in the allowable gross revenue a value for certain crops, when and as determined by the Deputy Administrator, that they produced that did not generate revenue directly from the sale of the crop and that the producer uses within their ordinary operation. This would include, for example, wine makers who grow their own wine grapes and process those grapes into wine and producers of forage crops who store the crop to feed to livestock on their farm. These producers would not have revenue from the sale of the portion of their crop used for these purposes. The determination that producers may include a crop's value is at the Deputy Administrator's discretion. Wine grapes used to process grapes into wine, forage crops that are stored and fed to livestock, and certain other crops, as listed on the FSA website at <https://www.fsa.usda.gov/programs-and-services/emergency-relief/index>, have been determined by the Deputy administrator to qualify for including the crop's value.

The value of the eligible crop reported in the producer's allowable gross revenue will be based on the producer's actual production of the crop and a price for the crop based on the best available data for each crop, such as published price data for the crop²³ or the average price obtained by other producers in the area, as determined by the Deputy Administrator and published through guidance on FSA's website. This provision is

²³ Published sources of price data that the Deputy Administrator may consider include, but are not limited to, FCIC-established prices, FSA-established NCT prices, and National Agricultural Statistic Service prices.

intended to address a gap in how crop losses in these situations may be accounted for in a producer's payment, and it does not cover crops that were sold by a producer.

These adjustment provisions only apply to producers that received a payment under the previous ERP for the 2021 program year based on the 2022 tax year for their representative disaster year revenue because those producers must use the tax year option. All other producers that would require such adjustments must use the expected revenue option, as previously explained in this document.

Track 2 Expected Revenue Option

As mentioned above, for Track 2, as an alternative to using the tax year option, a producer may certify to a benchmark year revenue that represents the producer's reasonably expected revenue prior to the impact of the qualifying disaster event, as well as their actual disaster year revenue. The producer's total expected revenue must include all eligible crops that could have been affected by a qualifying disaster event in calendar year 2022, including crops prevented from being planted, planted crops (including annual, perennial, and inventory), and crops that were in storage. It does not include revenue from crop by-products, such as cotton seed and corn stalks. Expected revenue will be based on:

- For perennial, planted, and prevented planted yield-based crops, the producer's expected acres multiplied by their expected yield per acre, multiplied by the expected price;
- For inventory crops, the total inventory prior to the impact of the qualifying disaster event multiplied by the expected price; and
- For crops in storage, the producer's production in storage multiplied by the expected price.

Expected revenue must be based on realistic projections that can be supported by acceptable documentation of expected inventory, acres, yield, and unit price, such as the following:

- sales contracts,
- purchase agreements,
- market agreements,
- settlement sheets,
- scale tickets,
- lease agreements,
- local market prices,
- FCIC established yield and prices,
- Federal crop insurance documents,
- historical yield data,
- appraisals,
- farm business plans,
- acreage reports,
- FSA National Crop Table (NCT) data,²⁴
- ARC and PLC prices and yields²⁵
- cooperative extension service and university data,
- financial institute documentation, and
- National Agricultural Statistics Service data.

The producer must maintain sufficient documentation to support that their projection is reasonable and realistic; that documentation must be available if requested.

²⁴ NCT data are available at <https://www.fsa.usda.gov/programs-and-services/disaster-assistance-program/noninsured-crop-disaster-assistance/index>.

²⁵ ARC and PLC information is available at https://www.fsa.usda.gov/programs-and-services/arcplc_program/arcplc-program-data/index.

Actual disaster year revenue for the expected revenue option is equal to the actual revenue from all crops that were included in the producer's expected revenue. Actual disaster year revenue includes:

- Revenue from sales of eligible crops;
- Federal crop insurance indemnities for eligible crops, minus premiums and administrative fees;
- NAP payments for eligible crops, minus premiums and service fees;
- Indemnities for eligible crops under private crop insurance policies;
- The value of eligible crops produced but not sold (such as crops in storage or inventory, or fed to the producer's livestock);
- FSA Payments issued for 2022 calendar year disaster losses, including but not limited to payments under:
 - ELAP for aquaculture crops,
 - ARC,
 - LDP,
 - MLG,
- Net gains from hedging from eligible crops produced;
- Grants from NOAA and State programs for the direct loss of eligible crops or the loss of revenue for eligible crops; and
- Other revenue directly related to the production of eligible crops that IRS requires the producer to report as income.

For crops produced in the 2022 or 2023 crop years but not sold, the value included in actual disaster year revenue may differ from the expected revenue for the crops due to market price fluctuations between planting and time of marketing, quality losses, or production losses related to qualifying disaster events occurring in the 2022 calendar year. Crops in storage from 2021 or earlier must use the expected price to

calculate the value included in actual disaster year revenue if the crop remains in storage at the time of application since ERP 2022 does not pay for market fluctuations for prior year crops.

Form FSA-524-B, Emergency Relief Program (ERP) 2022 Track 2 Expected Revenue Worksheet, is an optional form that producers may use to assist in calculating their expected and actual revenue. It is available at <https://www.fsa.usda.gov/programs-and-services/emergency-relief/index>.

Track 2 Applications

Producers applying for Track 2 must submit FSA-524, Emergency Relief Program (ERP) 2022 Track 2 Application, certifying their benchmark year revenue and disaster year revenue. The FSA-524 Appendix provides a guide for what should be included as applicable revenue for the option elected by the producer. In addition, all producers applying for Track 2 must submit FSA-525, Crop Insurance and/or NAP Coverage Agreement, by the application deadline to have a complete application on file.

For the purpose of administration of the ERP 2022 payment limitations, producers applying for Track 2 must certify to the percentage of their disaster year revenue from specialty and high value crops combined, and from other crops on their application. The percentages certified must be equal to the percentages that the producer would have reasonably expected to receive for the disaster year if not for the qualifying disaster event. Producers must also certify to whether all acreage of all eligible crops (including crops grown, prevented from being planted, and in storage or inventory in the disaster year) were covered by Federal crop insurance or NAP, for the purpose of determining the applicable ERP factor, as explained below.

If requested by FSA, documentation required to support a producer's certifications of revenue and other information provided on the application must be submitted within 30 calendar days of FSA's request, or the producer will be considered ineligible for Track 2.

Track 2 Payment Calculation

To determine a producer's Track 2 payment amount, FSA will calculate:

Step 1 The producer's benchmark year revenue, multiplied by the ERP factor of 90 percent if all acres of all eligible crops were covered by Federal crop insurance or NAP, or 70 percent if not all acres of all eligible crops were covered by Federal crop insurance or NAP; minus

Step 2 The producer's disaster year revenue; minus

Step 3 The sum of the producer's gross Track 1 payments.²⁶

After performing the calculation described above, progressive factoring²⁷ will be applied to the calculated amount according to the table below.

Payment Range	Progressive Factor (%)
Up to \$2,000.....	100
\$2,001 to \$4,000.....	80
\$4,001 to \$6,000.....	60
\$6,001 to \$8,000.....	40
\$8,001 to \$10,000.....	20
Over \$10,000.....	10

For example, to apply progressive factoring to a calculated loss of \$5,000, FSA would multiply:

- the first \$2,000 by a factor of 100 percent ($\$2,000 \times 100\% = \$2,000$),
- the second \$2,000 by a factor of 80 percent ($\$2,000 \times 80\% = \$1,600$), and

²⁶ The gross ERP Track 1 calculated payment is the calculated payment amount after all applicable factoring and prior to any payment reductions for reasons including, but not limited to, sequestration and payment limitation.

²⁷ Track 2 applies progressive factoring in a manner consistent with the progressive factoring of Track 1 payments based on Federal crop insurance indemnified losses. Track 2 assistance is calculated based on a decrease in disaster year revenue for eligible revenue, production, and quality losses of eligible insured, non-insurable, and uninsured crops not included in Track 1. While Track 1 payments based on NAP payments are not subject to progressive factoring, Track 2 assistance is calculated based on the overall decrease in disaster year revenue and does not calculate assistance independently for insured crops and NAP crops in a manner similar to Track 1; therefore, progressive factoring is applied to all Track 2 payments.

- the remaining \$1,000 by a factor of 60 percent ($\$1,000 \times 60\% = \600).
- The sum of those calculations is \$4,200.

For another example, to apply progressive factoring to a calculated loss of \$430,000, FSA would multiply:

- the first \$2,000 by a factor of 100 percent ($\$2,000 \times 100\% = \$2,000$),
- the second \$2,000 by a factor of 80 percent ($\$2,000 \times 80\% = \$1,600$),
- the third \$2,000 by a factor of 60 percent ($\$2,000 \times 60\% = \$1,200$),
- the fourth \$2,000 by a factor of 40 percent ($\$2,000 \times 40\% = \800),
- the fifth \$2,000 by a factor of 20% ($\$2,000 \times 20\% = \400), and
- the remaining \$420,000 by a factor of 10 percent ($\$420,000 \times 10\% = \$42,000$).

The sum of those calculations is \$48,000, which is the gross ERP 2022 payment after progressive factoring.

FSA will calculate the total of the results for each range above. For underserved producers, the sum of the results will be multiplied by a factor of 115 percent, and the underserved producer's calculated Track 2 payment will be equal to the lesser of the resulting amount or the amount calculated after step 3 above.²⁸ For all other eligible

²⁸ Underserved producers will receive an increase to their Track 2 payment that is equal to 15 percent of the gross Track 2 payment after progressive factoring not to exceed the calculated Track 2 payment before progressive factoring. FSA calculates payments based on a higher payment factor for underserved farmers and ranchers (or specific groups included in that term) in several programs, such as Emergency Conservation Program, ELAP, and the Tree Assistance Program. FSA has also used higher payment factors for these producers in several recently announced programs: the Food Safety Certification for Specialty Crops Program, the Organic and Transitional Education and Certification Program, Pandemic Assistance Revenue Program, and the previous ELRP and ERP programs for qualifying disaster events in calendar years 2020 and 2021. In addition, NAP provides a reduced service fee and premium for underserved farmers and ranchers. This approach supports the equitable administration of FSA programs, as underserved farmers and ranchers are more likely to lack financial reserves and access to capital that would allow them to cope with losses due to unexpected events outside of their control.

producers, the sum of the results for each range will be the calculated Track 2 payment. FSA will multiply that amount by the percentage of the expected disaster year revenue for specialty and high value crops or other crops, as applicable, to determine the amounts that will apply to the payment limitations for specialty and high value crops (combined) and other crops.

For example, the amount calculated after step 3 above is \$430,000 and is reduced to \$48,000 after progressive factoring. For an underserved producer, FSA would multiply \$48,000 times 115 percent which equals \$55,200 which is less than the max payment amount of \$430,000. The producer certified to 50 percent of expected revenue as being from specialty crops. FSA would multiply \$55,200 times 50 percent which equals \$27,600 gross payment attributed to specialty crops. FSA would subtract \$27,600 from \$55,200 which equals \$27,600 gross payment attributed to other crops. The producer's total payment is \$55,200 ($\$27,600 + \$27,600 = \$55,200$). FSA will apply a final payment factor of 75 percent to all calculated Track 2 payments, including payments to underserved producers, to ensure payments do not exceed available funding.

If a producer receives a Track 1 payment after their Track 2 payment is calculated, the producer's Track 2 payment will be recalculated and the producer must refund any resulting overpayment.

FSA will issue Track 2 payments as applications are processed and approved. All ERP 2022 payments are subject to the availability of funding. If additional funding is available after ERP 2022 payments are issued, FSA may issue an additional payment, not to exceed the maximum amount allowed by law as explained below.

Applying for ERP 2022

FSA expects to begin mailing Track 1 application forms on or around November 8, 2023, to producers who received Federal crop insurance indemnities, and to begin mailing forms to producers who received NAP payments on or around November 8,

2023. For Track 2, FSA will begin accepting applications on **[INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**, and producers may obtain an application form and FSA-525, Crop Insurance and/or Nap Coverage Agreement for ERP 2022, through their county office or online at <https://www.fsa.usda.gov/programs-and-services/emergency-relief/index>.

Applications may be submitted in person or by mail, email, facsimile, or other methods announced by FSA. A complete application for each track a producer is applying for must be submitted to the producer's recording county office by the close of business on the deadline announced by FSA (the ERP 2022 deadline).

To receive an ERP 2022 payment, producers, including any producers with an SBI who have a share in a crop as indicated on a Track 1 application, must also have the following forms on file with FSA within 60 days of the ERP 2022 deadline:

- Form AD-2047, Customer Data Worksheet;
- Form CCC-902, Farm Operating Plan for an individual or legal entity as provided in 7 CFR part 1400;
- Form CCC-901, Member Information for Legal Entities (if applicable); and
- A highly erodible land conservation (sometimes referred to as HELC) and wetland conservation certification as provided in 7 CFR part 12 (form AD-1026 Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification) for the producer and applicable affiliates.

Many producers, especially if they have participated in FSA programs recently, will already have these forms on file with FSA.

In addition to the forms listed above, certain producers will also need to submit the following forms in order to have their payment calculated as described above for

underserved producers or to qualify for an increased payment limitation, as described in the Payment Limitation section in this document:

- Form CCC-860, Socially Disadvantaged, Limited Resource, Beginning and Veteran Farmer or Rancher Certification, applicable for the 2022 program year;²⁹ or
- Form FSA-510, Request for an Exception to the \$125,000 Payment Limitation for Certain Programs, including the certification from a certified public accountant or attorney that the person or legal entity has met the requirements to be eligible for the increased payment limitation, for a person or a legal entity and all members of that entity, for the 2022 program year.

FSA will continue to accept forms CCC-860 and FSA-510 for ERP 2022 until 60 days after the ERP 2022 deadline. If a producer files a CCC-860 or FSA-510 and the accompanying certification after their ERP 2022 payment is issued but before the deadline to submit these forms, FSA will process the form CCC-860 or FSA-510 and issue any resulting additional payment amount.

Payment Limitation

As required by Title I of the Disaster Relief Supplemental Appropriations Act, 2023, the payment limitation for ERP 2022 is determined by the person's or legal entity's

²⁹ A person who has filed CCC-860 certifying their status as a socially disadvantaged, beginning, or veteran farmer or rancher for a prior program year is not required to submit a subsequent CCC-860 certifying their status for a later program year because a person's status as socially disadvantaged would not change in different years, and their certification as a beginning or veteran farmer or rancher includes the relevant date needed to determine for what program years the status would apply.

An entity that has filed CCC-860 certifying its status as a socially disadvantaged, beginning, or veteran farmer or rancher for a prior program year is not required to submit a subsequent certification of its status for a later program year unless the entity's status has changed due to changes in membership.

Because a producer's status as a limited resource farmer or rancher may change annually depending on the producer's direct and indirect gross farm sales and household income, those producers must submit CCC-860 for each applicable program year.

average adjusted gross farm income. Specifically, a person or legal entity, other than a joint venture or general partnership, cannot receive, directly or indirectly, more than \$125,000 in payments for specialty and high value crops combined and \$125,000 in payment for all non-specialty crops and other crops under ERP 2022 (for Track 1 and Track 2 combined) if their average adjusted gross farm income is less than 75 percent of their average AGI the 3 taxable years preceding the most immediately preceding complete tax year.

If at least 75 percent of the person or legal entity's average AGI is income derived from farming, ranching, and forestry related activities and the participant provides the required certification and documentation, as discussed below, the person or legal entity, other than a joint venture or general partnership, is eligible to receive, directly or indirectly, up to:

- \$900,000 for specialty crops under Tracks 1 and 2 and high value crops under Track 2 combined; and
- \$250,000 for non-specialty crops under Track 1 and other crops under Track 2, combined.

The relevant tax years for establishing a producer's AGI and percentage derived from farming, ranching, and forestry related activities are 2018, 2019, and 2020.

To receive more than \$125,000 in ERP 2022 payments, producers must submit form FSA-510, including the certification from a certified public accountant or attorney that the person or legal entity has met the requirements to be eligible for the increased payment limitation. If a producer requesting the increased payment limitation is a legal entity, all members of that entity must also complete form FSA-510 and provide the required certification according to the direct attribution provisions in 7 CFR 1400.105, "Attribution of Payments." If a legal entity would be eligible for the increased payment limitation based on the legal entity's average AGI that is income derived from farming,

ranching, and forestry related activities but a member of that legal entity either does not complete a form FSA-510 and provide the required certification or is not eligible for the increased payment limitation, the payment to the legal entity will be reduced for the payment limitation applicable to the share of the payment attributed to that member.

A payment made to a legal entity will be attributed to those members who have a direct or indirect ownership interest in the legal entity, unless the payment of the legal entity has been reduced by the proportionate ownership interest of the member due to that member's ineligibility.

Attribution of payments made to legal entities will be tracked through four levels of ownership in legal entities as follows:

- First level of ownership—any payment made to a legal entity that is owned in whole or in part by a person will be attributed to the person in an amount that represents the direct ownership interest in the first level or payment legal entity;³⁰
- Second level of ownership—any payment made to a first-level legal entity that is owned in whole or in part by another legal entity (referred to as a second-level legal entity) will be attributed to the second-level legal entity in proportion to the ownership of the second-level legal entity in the first-level legal entity; if the second-level legal entity is owned in whole or in part by a person, the amount of the payment made to the first-level legal entity will be attributed to the person in the amount that represents the indirect ownership in the first-level legal entity by the person;

³⁰ The “first level or payment legal entity” means that the payment entity will have a reduction applied, and if the payment entity happens to be a joint venture, that reduction is applied to the first level, or highest level, for payments. The “first level or payment legal entity” is the highest level of ownership of the applicant to whom payments can be attributed or limited. If the applicant is a business type that does not have a limitation or attribution, the reduction is applied to the first level, but if the business type can have the reduction applied directly to it, then the limitation applies.

- Third and fourth levels of ownership—except as provided in the second level of ownership bullet above and in the fourth level of ownership bullet below, any payments made to a legal entity at the third and fourth levels of ownership will be attributed in the same manner as specified in the second level of ownership bullet above; and
- Fourth-level of ownership—if the fourth level of ownership is that of a legal entity and not that of a person, a reduction in payment will be applied to the first-level or payment legal entity in the amount that represents the indirect ownership in the first level or payment legal entity by the fourth-level legal entity.

Payments made directly or indirectly to a person who is a minor child will not be combined with the earnings of the minor's parent or legal guardian.

A person or legal entity must provide the name, address, valid taxpayer identification number, and ownership share of each person, or the name, address, valid taxpayer identification number, and ownership share of each legal entity, that holds or acquires an ownership interest in the legal entity. ERP 2022 payments to a legal entity will be reduced in proportion to a member's ownership share when a valid taxpayer identification number for a person or legal entity that holds a direct or indirect ownership interest of less than 10 percent at or above the fourth level of ownership in the business structure is not provided to USDA. A legal entity will not be eligible to receive payment when a valid taxpayer identification number for a person or legal entity that holds a direct or indirect ownership interest of 10 percent or greater at or above the fourth level of ownership in the business structure is not provided to USDA.

If a person or legal entity is not eligible to receive ERP 2022 payments due to the person or legal entity failing to satisfy payment eligibility provisions, the payment made either directly or indirectly to the person or legal entity will be reduced to zero. The

amount of the reduction for the direct payment to the producer will be commensurate with the direct or indirect ownership interest of the ineligible person or ineligible legal entity.

Like other programs administered by FSA, payments made to an Indian Tribe or Tribal organization, as defined in section 4(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304), will not be subject to payment limitation.

Requirement to Purchase Federal Crop Insurance or NAP Coverage

Title I of the Disaster Relief Supplemental Appropriations Act, 2023, requires all producers who receive ERP 2022 payments, including those receiving a Track 1 payment for a tree loss under a Federal crop insurance policy, to purchase Federal crop insurance, or NAP coverage where Federal crop insurance is not available, for the next 2 available crop years, as determined by the Secretary. Participants must file an accurate acreage report and obtain Federal crop insurance or NAP coverage, as may be applicable:

- At a coverage level equal to or greater than 60 percent for insurable crops and trees; or
- At the catastrophic level or higher for NAP-eligible crops.

Availability will be determined from the date a producer receives an ERP 2022 payment and may vary depending on the timing and availability of Federal crop insurance or NAP coverage for a producer's particular crops. The final crop year to purchase Federal crop insurance or NAP coverage to meet the second year of coverage for this requirement is the 2027 crop year.

In situations where Federal crop insurance is unavailable for a crop, an ERP 2022 participant must obtain NAP coverage. Section 1001D of the Food Security Act of 1985 (1985 Farm Bill; Pub. L. 99-198) provides that a person or entity with an average AGI greater than \$900,000 is not eligible to participate in NAP; however, producers with an average AGI greater than \$900,000 are eligible to participate in ERP 2022. To reconcile

this restriction in the 1985 Farm Bill and the requirement to obtain NAP or Federal crop insurance coverage, ERP 2022 participants may meet the purchase requirement by purchasing WFRP coverage, if eligible, or they may pay the applicable NAP service fee despite their ineligibility for a NAP payment. In other words, the service fee must be paid even though no NAP payment may be made because the average AGI of the person or entity exceeds the 1985 Farm Bill limitation.

For Track 1, the Federal crop insurance and NAP coverage requirements are specific to the crop and county (which is the county where the crop is physically located for insured crops and the administrative county for NAP-covered crops) for which Track 1 payments are paid.

Producers who receive a Track 1 payment that was calculated based on an indemnity under a Pasture, Rangeland, and Forage policy; Annual Forage policy; or WFRP policy must purchase the same type of policy or a combination of individual policies for the crops that had covered losses under ERP 2022 to meet the Federal crop insurance and NAP coverage requirement.

Producers who receive a Track 1 payment on a crop in a county and who have the crop or crop acreage in subsequent years, as provided in this document, and who fail to obtain the 2 years of Federal crop insurance or NAP coverage required as specified in this document must refund all Track 1 payments for that crop in that county with interest from the date of disbursement.

Producers who were paid under Track 1 for a crop in a county, but do not plant that crop in that county in a year for which the Federal crop insurance and NAP coverage requirement applies, are not subject to the Federal crop insurance or NAP purchase requirement for that year.

For Track 2, producers must report all crops that suffered a revenue loss in whole or in part due to a qualifying disaster event on form FSA-525, Crop Insurance and/or

NAP Coverage Agreement, and obtain the required level of Federal crop insurance or NAP coverage in all counties where the crop is grown for the applicable years. For all crops listed on form FSA–525, producers who have the crop or crop acreage in subsequent years and who fail to obtain the required 2 years of Federal crop insurance or NAP coverage must refund the ERP Track 2 payment with interest from the date of disbursement.

If both Federal crop insurance and NAP coverage are unavailable for a crop, the producer must obtain WFRP Federal crop insurance coverage, if eligible.

Producers who receive an ERP Track 1 payment for a crop are not required to obtain additional years of Federal crop insurance or NAP coverage for that crop if they also receive an ERP Track 2 payment for a loss associated with that crop.

Producers who do not plant a crop listed on form FSA–525 in a year for which the Federal crop insurance and NAP coverage requirement applies are not subject to the Federal crop insurance or NAP purchase requirement for that crop for that year.

Provisions Requiring Refund to FSA

In the event that any ERP 2022 payment resulted from erroneous information reported by the producer, or any person acting on their behalf, or if the producer's data are updated after RMA or FSA calculates a producer's Track 1 payment, the ERP 2022 payment for both Track 1 and Track 2, as applicable, will be recalculated and the producer must refund any excess payment to FSA, including interest to be calculated from the date of the disbursement to the producer. If FSA determines that the producer intentionally misrepresented information used to determine the producer's ERP 2022 payment amount, the application will be disapproved and the producer must refund the full payment to FSA with interest from the date of disbursement. All persons with a financial interest in a legal entity receiving payments are jointly and severally liable for any refund, including related charges, which is determined to be due to FSA for any

reason. Any required refunds must be resolved in accordance with debt settlement regulations in 7 CFR part 3.

General Provisions

Applicable general eligibility requirements, including recordkeeping requirements and required compliance with HELC and Wetland Conservation provisions, are similar to those for previous ad hoc crop disaster programs and current permanent disaster programs.

General requirements that apply to other FSA-administered commodity programs also apply to ERP 2022. Accordingly, producers that receive ERP 2022 must be in compliance with the provisions of 7 CFR part 12, “Highly Erodible Land and Wetland Conservation,” and the provisions of 7 CFR 718.6, which address ineligibility for benefits for offenses involving controlled substances. Appeal regulations in 7 CFR parts 11 and 780 and equitable relief and finality provisions in 7 CFR part 718, subpart D, apply to determinations under ERP 2022. As described above, Track 1 payments are calculated using data on file with RMA and FSA at the time of payment calculation, unless that data are later updated. Producers who receive a Track 1 application and disagree with the calculated payment amount or data used in the calculation may apply for Track 2, which will allow them to provide their data to FSA through a traditional application process.

Participants are required to retain documentation in support of their application for 3 years after the date of approval. All information provided to FSA for program eligibility and payment calculation purposes, including certification that a producer suffered a loss due to a qualifying disaster event, is subject to spot check. Participants receiving ERP 2022 payments or any other person who furnishes such information to USDA must permit authorized representatives of USDA or the Government Accountability Office, during regular business hours, to enter the agricultural operation

and to inspect, examine, and to allow representatives to make copies of books, records, or other items for the purpose of confirming the accuracy of the information provided by the participant.

If requested by FSA, the producer must provide additional documentation that establishes the producer's eligibility for ERP 2022. If supporting documentation is requested, the documentation must be submitted to FSA within 30 calendar days from the request or the application will be disapproved by FSA. FSA may request supporting documentation to verify information provided by the producer and the producer's eligibility including, but not limited to, the producer's ownership share in the crop or commodity, benchmark year revenue, disaster year revenue, and percentage of expected revenue from specialty and high value crops and other crops.

ERP 2022 applicants filing an FSA-510 are subject to an FSA audit of information submitted for the purpose of increasing the program's payment limitation. As a part of this audit, FSA may request income tax returns, and if requested, must be supplied by all related persons and legal entities. In addition to any other requirement under any Federal statute, relevant Federal income tax returns and documentation must be retained a minimum of 3 years after the end of the calendar year corresponding to the year for which payments or benefits are requested. Failure to provide necessary and accurate information to verify compliance, or failure to comply with these requirements will result in ineligibility for ERP 2022 benefits and require refund of any ERP 2022 payments, including interest to be calculated from the date of the disbursement to the producer.

Applicants have a right to a decision in response to a timely-filed complete application.

If an applicant files a late ERP 2022 application, the application will be considered a request to waive the deadline. Requests to waive or modify program

provisions are at the discretion of the Deputy Administrator. The Deputy Administrator has the authority to waive or modify application deadlines and other requirements or program provisions not specified in law in cases where the Deputy Administrator determines it is equitable to do so and the lateness or failure to meet such other requirements or program provisions do not adversely affect the operation of ERP 2022. Applicants who request to waive or modify program provisions do not have a right to a decision on those requests. The Deputy Administrator's refusal to exercise discretion on requests to waive or modify ERP 2022 provisions will not be considered an adverse decision and is, by itself, not appealable.

Any payment under ERP 2022 will be made without regard to questions of title under State law and without regard to any claim or lien. The regulations governing offsets in 7 CFR part 3 apply to ERP 2022 payments.

If any person who would otherwise be eligible to receive a payment dies before the payment is received, payment may be released as specified in 7 CFR 707.3. Similarly, if any person or legal entity who would otherwise have been eligible to apply for a payment dies or is dissolved, respectively, before the payment is applied for, payment may be released in accordance with this document if a timely application is filed by an authorized representative. Proof of authority to sign for the deceased producer or dissolved entity must be provided. If a participant is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolution or their duly authorized representatives must sign the application for payment. Eligibility of such participant will be determined, as it is for other participants, based on ownership share and risk in producing the crop.

In either applying for or participating in ERP 2022, or both, the producer is subject to laws against perjury (including, but not limited to, 18 U.S.C. 1621). If the producer willfully makes and represents as true any verbal or written declaration,

certification, statement, or verification that the producer knows or believes not to be true, in the course of either applying for or participating in ERP 2022, or both, then the producer may be found to be guilty of perjury. Except as otherwise provided by law, if guilty of perjury the applicant may be fined, imprisoned for not more than 5 years, or both, regardless of whether the producer makes such verbal or written declaration, certification, statement, or verification within or outside the United States.

For the purposes of the effect of a lien on eligibility for Federal programs (28 U.S.C. 3201(e)), USDA waives the restriction on receipt of funds under ERP 2022 under the following condition: by applying for ERP 2022, applicants agree, as a condition of the waiver, that the ERP 2022 payments will be applied to reduce the amount of the judgment lien.

In addition to any other Federal laws that apply to ERP 2022, the following laws apply: 15 U.S.C. 714; and 18 U.S.C. 286, 287, 371, and 1001.

Paperwork Reduction Act Requirements

In compliance with the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the information collection request has been approved by OMB under an emergency request under control number 0560-0316. FSA will collect the information from producers to qualify for an ERP 2022 payment. ERP 2022 is a one-time funding as described in this NOFA.

In accordance with the Paperwork Reduction Act, FSA is requesting comments from all interested individuals and organizations on a new information collection request that supports ERP 2022.

Description of Information Collection

Title: Emergency Relief Program 2022 (ERP 2022).

OMB Control Number: 0560–0316.

Type of Request: New.

Abstract: FSA is providing assistance to eligible crop producers to cover the necessary expenses related losses of revenue, quality, or production of crops (including milk, on-farm stored commodities, crops prevented from planting in 2020 and 2021, and harvested adulterated wine grapes), trees, bushes, and vines, as a consequence of droughts, wildfires, hurricanes, tornadoes, floods, derechos, excessive heat, winter storms, freeze, including a polar vortex, smoke exposure, quality losses of crops, and excessive moisture occurring in calendar year 2022.

FSA is administering ERP in two tracks (referred to as Track 1 and Track 2). ERP Track 1 will use a streamlined process with pre-filled application forms for losses where the data are already on file with FSA or the Risk Management Agency (RMA) as a result of the producers previously receiving a Noninsured Crop Disaster Assistance Program (NAP) payment or a Federal crop insurance indemnity under certain Federal crop insurance policies. ERP Track 2 will provide payments for other eligible losses through a revenue-based approach using a traditional application process during which producers will provide the information required to calculate a payment.

For the following estimated total annual burden on respondents, the formula used to calculate the total burden hours is the estimated average time per response multiplied by the estimated total annual responses.

Estimate of Average Time to Respond: Public reporting burden for collecting information under this notice is estimated to average 0.305 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information.

Type of Respondents: Producers.

Estimated Number of Respondents: 230,000.

Estimated Average Number of Responses per Respondent: 1.43.

Estimated Total Annual Responses: 327,855.

Estimated Total Annual Burden on Respondents: 100,072 hours.

The purpose of this notice is to request comments from the public (as well as affected agencies) concerning the information collection request.

The comments will help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of burden of the collection of information including the validity of the methodology and assumptions used;

(3) Evaluate the quality, utility and clarity of the information technology; and

(4) Minimize the burden of the information collection on those who respond through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses where provided, will be made a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval.

Environmental Review

The environmental impacts have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulation for compliance with NEPA (7 CFR part 799). ERP 2022 is authorized by Title I of the Disaster Relief Supplemental Appropriations Act, 2023. The intent of ERP 2022 is to provide payments to eligible crop producers who suffered eligible crop and tree losses due to wildfires, hurricanes, floods, derechos, excessive heat, tornadoes,

winter storms, freeze (including a polar vortex), smoke exposure, excessive moisture, and qualifying drought, and related conditions occurring in calendar year 2022.

The limited discretionary aspects of the program were designed to be consistent with established FSA disaster programs. As such, the Categorical Exclusions in 7 CFR part 799.31 apply, specifically 7 CFR 799.31(b)(6)(iv) and (vi) (that is, § 799.31(b)(6)(iv) Individual farm participation in FSA programs where no ground disturbance or change in land use occurred as a result of the action or participation; and § 799.31(b)(6)(vi) Safety net programs administered by FSA). No Extraordinary Circumstances (7 CFR 799.33) exist. As such, FSA has determined that the implementation of ERP 2022 and the participation in ERP 2022 do not constitute major Federal actions that would significantly affect the quality of the human environment, individually or cumulatively. Therefore, FSA will not prepare an environmental assessment or environmental impact statement for this regulatory action, and this notice serves as documentation of the programmatic environmental compliance decision.

Federal Assistance Programs

The titles and numbers of the Federal assistance programs, as found in the Assistance Listings, to which this document applies are 10.964—Emergency Relief Program and 10.979 – Emergency Relief Program 2022.

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family or parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity

conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Individuals who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or the USDA TARGET Center at (202) 720-2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay Service (both voice and text telephone users can initiate this call from any telephone). Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at <https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint> and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov.

USDA is an equal opportunity provider, employer, and lender.

Zach Ducheneaux,
Administrator,
Farm Service Agency.

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